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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

TUCKER, PHILIP C

ART UNIT	PAPER NUMBER
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1712

DATE MAILED: 02/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

918264

Applicant(s)

LUNGWITZ

Examiner

P. TUCKER

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-21 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-11, 13-16, 18, 19 is/are rejected.
- ☒ Claim(s) 12, 17, 20, 21 is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). S, 6
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

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## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 10, 12 and 16 are objected to because of the following informalities: In claim 12, it appears that the second occurrence of “comprising” should not be included therein. In claims 10 and 16, the word “cesium” is not spelled correctly. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11, 13-16, 18, 19 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, in line 1, it is taught that the brine comprises an inorganic salt, then further selects a member which can be an inorganic salt in lines 2-3. The scope of the claim is thus not clear. Dependent claims fall herewith.

In claim 7, zinc chloride is not an alkaline earth halide.

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In claim 13, the analogous hydroalkyl, allyl or aryl aminocarboxylic acids are not hydroxyethylamino carboxylic acids as required by parent claim 12. Dependent claims fall herewith.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4-9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahayanake (6258859 B1).

Dahayanake teaches a viscoelastic surfactant based fluid which comprises a zwitterionic surfactant within the scope of the present invention which can contain organic salts, inorganic salts, and other surfactants, such as alkyl benzene sulfonates (column 3, line 57 - column 4, line 25, column 50, line 50-52, column 9, lines 54-67). The inorganic salt can be present at levels of upto 30%, which would give a density within the scope of the present invention (column 6, line 63 - column 7, line 13). Dahayanake differs from the present invention in that an example of a salt concentration of as high as 30% is not specifically taught. It would however be

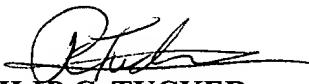
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obvious to one of ordinary skill in the art to utilize an inorganic salt concentration of as high as 30%, given the teaching that such levels are useful for forming the viscoelastic fluid composition.

6. Claims 17, 20 and 21 are objected to as being dependent upon a objected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Philip Tucker whose telephone number is (703) 308-0529. The examiner's normal working hours are 7:30am-4:00pm, Monday-Friday. If necessary SPE Robert Dawson may be contacted at 703-308-2340. For inquiries of a general nature call the receptionist at 703-308-0651. The group FAX no. is 703-872-9310. The **after final** fax no. is 703-872-9311.

PCT-2723  
January 24, 2003

  
**PHILIP C. TUCKER**  
**ART UNIT 1712**